IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) No.74/2007

Indian Medical Association ..... Petitioner
! through: Mr. H.L.Tikku, Sr. Adv. with
Ms. Yashmeet Kaur, Adv.

VERSUS

$ Dr.Ramesh Dutta & Anr. ..... Respondents
^ through: Mr. S.P.Kalra, Sr. Adv. with
Mr. Sanjay Kalra, Adv.

% **D**ATE OF DECISION: 17.04.2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: PRADEEP NANDRAJOG, J.

1. Petitioner, Indian Medical Association is aggrieved by the order dated 7.12.2006 passed by a Civil Judge, Delhi dismissing petitioner's application under Section 8 of the Arbitration and Conciliation Act 1996. Reason as to why application was being dismissed is as stated in para 14 of the impugned order. The same reads as under:-

"14. Rule 41 only provides for arbitration of the

> disputes which are not covered otherwise, under any other law. It is not the situation in the present case as the election disputes are clearly covered under rule 40 (ix) (b). Therefore, arbitration under rule 41 cannot be taken up. Secondly, the present dispute does not only involve the dispute between a member of a State branch and IMA but. In its essence the dispute is between two members of a State branch and that too regarding election. IMA has no power to arbitrate in a dispute between two members under rule 41. The only power given to IMA to interfere in election dispute is, when a committee appointed by the State body fails to resolve the dispute and refer to the same to IMA. It has not been shown to be so. In these circumstances, I find that the present dispute is not a dispute covered under rule 41 and as such is not a dispute arbitrable by IMA. Therefore, the matter cannot be referred for arbitration and section 8 of the Arbitration and Conciliation Act is not applicable. The application is accordingly dismissed."

2. To appreciate the rival contentions, suffice would it be to note that Indian Medical Association is the apex body at the national level with State Medical Associations as its members. As per the memorandum of association, rules and regulations of Indian Medical Association, pertaining to election disputes at state level, vide rule 40, an election tribunal has to be constituted for adjudication of the said dispute. Vide rule 41, disputes or differences between a member of Indian Medical Association or a member of a State Medical Association with Indian Medical Association

has to be decided through the process of arbitration.

3. Dr.Ramesh Dutta, respondent No.1 and the plaintiff of the suit in question wherein petitioner filed an application under Section 8 of the Arbitration and Conciliation Act 1996 had intended to contest an election for the post of the president of the Delhi Medical Association. Respondent No.2, Dr.Ajay Rohtagi impleaded as defendant No.1 in the suit filed by Dr.Ramesh Dutta had likewise intended to contest the election.

4. Fearing malpractice at the poll, Dr.Ramesh Dutta filed a suit registered as suit No.1137/2006. He got an observer appointed to oversee the poll.

5. The poll was held. Dr.Ramesh Dutta claims that he was successfully declared elected. Respondent No.2, Dr.Ajay Rohtagi had a dispute.

6. While filing their response in suit No.1137/2006, defendants thereof stated that on a petition received from Dr.Ajay Rohtagi, petitioner had constituted an election tribunal which had nullified the election.

7. Suit No.1137/2006 was rendered infructuous. Dr.Ramesh Dutta filed the instant suit. He impleaded Dr.Ajay Rohtagi as defendant No.1 and the petitioner as

defendant No.2.

8. Suit sought a decree of declaration and permanent injunction. The prayers are as under:-

> (i) Pass a decree for declaration in favour of the plaintiff and against the defendant No.2 declaring that the plaintiff was elected to the post of President-Elect (2006-2007) in accordance with Memorandum, Rules and Bye-laws of Delhi Medical Association.
>
> (ii) Pass further decree for declaration that the plaintiff has a lawful right to represent himself as a President-Elect for the year 2006-2007 of Delhi Medical Association in accordance with D.M.A. Memorandum, Rules and Bye-laws.
>
> (iii) Pass a decree for permanent injunction in favour of plaintiff and against the defendant No.2 restraining defendant No.2 from interfering in the working/functioning of the plaintiff as "President Elect" for Delhi Medical Association for the year 2006-2007.
>
> (iv) Cost of the suit.

9. In a nutshell, Ramesh Dutta stated in the plaint that he contested the election for the post of President of Delhi Medical Association. That the said election was conducted according to the rules and regulations of Delhi Medical Association. That he was declared elected on 12.2.2006. That he was never associated at any hearing before any election tribunal stated to have been constituted by the petitioner. That he learnt about the poll being

nullified when written statement was filed in the earlier suit filed by him. That the election tribunal constituted by the Indian Medical Association was in contravention of Article 15 of the Memorandum and Articles of Association of Delhi Medical Association. That Article 15 envisaged that at the first instance a complaint regarding election at a State level would be referred to an internal committee. That no such committee was constituted. That constitution of the election tribunal by the petitioner was illegal inasmuch as Article 15 of the Memorandum and Articles of Association of Delhi Medical Association was violated.

10. Indian Medical Association filed application under Section 8 of the Arbitration and Conciliation Act 1996, inter alia alleging that the dispute raised in the plaint was between a member of a State association affiliated to it and the Indian Medical Association. Therefore, matter had to be referred to arbitration.

11. To appreciate reasoning of the learned Judge, relevant part of rule 40 of the rules of the petitioner as also rule 41 have to be noted.

12. Relevant part of rule 40 reads as under:-

"**40(b)** Election disputes at State/Territorial

Branch and Local Branch Level:

(i) In case of election disputes in the State/Territorial or Local Branches, an Election Tribunal shall be constituted. For disputes at the State/Territorial levels, the Tribunal shall comprise of the National President of the IMA and two immediate Past National Presidents of the IMA. For disputes at the Local Branch level, the State/Territorial Branch President and two Immediate Past Presidents of the State/Territorial Branch under whose jurisdiction the Local Branch falls, shall form the Tribunal.

(ii) In case the President or a member of the Tribunal is himself involved in any way in such a dispute, or in unable to act or refuses to act, or even otherwise interested, he will not be a member of the Tribunal and his place shall be taken by another Past President. When there is a difference of opinion amongst the members of the Tribunal, the opinion of the National President, IMA or Chairman of the Tribunal for election disputes at the State/Territorial level and that of the State/Territorial President or Chairman of the Tribunal for election disputes at the Local Branch level, shall be final.

(iii) If any of disputing parties is not satisfied with the Tribunal at State/Territorial level, it may appeal to the National President of the Association, who if he feels that a prima facie case for appeal exists, will refer it to a Tribunal as provided in Rule 40(a). The decision of the Tribunal shall be final and binding on all concerned.

(iv) Records of election shall be maintained for one year.

(v) No election shall be called in question except by an election petition presented to the National President, IMA, in case of an election

dispute at the State/Territorial Branch level, or to the President of State/Territorial Branch concerned in case of dispute at the Local Branch level, within 15 days of the declaration of the election results.

(vi) No election petition shall be entertained unless accompanied by an application fee of Rs.300/- (non-refundable) by cash/demand draft.

(vii) National President IMA/President State/Territorial Branch as the case may be, shall refer the petition within 7 days to the Election Tribunal as provided in the rules. The Election Tribunal shall meet within 3 weeks of such a reference. The Tribunal shall give opportunity both to the petitioners and defendants concerned to be present at the hearing. No non-member shall have the right to represent any party at these hearings.

(viii) In case of an election dispute at the State/Territorial Branch level, the Election Tribunal shall hold its hearings at IMA Headquarters or at a convenient place determined by National President IMA or Chairman of the Tribunal. In case of election dispute at the Local Branch level, the Election Tribunal shall hold its hearings at the Headquarters of the State/Territorial Branch or such other convenient place as determined by the President of the State/Territorial Branch or Chairman of the Tribunal.

(ix) The election dispute, if any, will fall under the jurisdiction of the court in place of action.

13. Rule 41 reads as under:-

"41. Any disputes or differences solution for which in not otherwise provided between (a) a member of IMA/State/Territorial/Local Branch and (b) the Indian Medical Association shall be decided by the Working Committee of Indian

> Medical Association. Any party raising such disputes shall give at least six weeks notice of the same to the Headquarters of IMA and the same shall be placed on the agenda of the following meeting of the Working Committee. The Working Committee may regulate its own procedure for the purpose.

14. Learned Judge has opined that the language of rule 41 is limited, in that, it envisages reference of only such disputes to an arbitration which are not otherwise provided for between Indian Medical Association or a member of Indian Medical Association. It has been held that since election disputes are covered by rule 40(b), rule 41 was inapplicable. Second reason is that in essence, dispute was between 2 members of a State branch pertaining to an election and Indian Medical Association was incidentally affected. Therefore, on said reasoning also dispute could not be referred to arbitration.

15. It is settled law that pleadings have to be read meaningfully and not in a pedantic fashion. Further, pleadings have to be understood and appreciated with reference to the prayer sought for.

16. In the suit filed by Dr.Ramesh Dutta, Dr.Ajay Rohtagi was impleaded as defendant No.1 and Indian Medical Association was impleaded as defendant No.2.

Declaration sought for was against Indian Medical Association. Decree for permanent injunction sought for was also against said association. In the context of the prayers made, pleadings in the suit had to be understood and appreciated.

17. From the averments made in the plaint it is evident that the grievance of Dr.Ramesh Dutta was that the election tribunal constituted by Indian Medical Association pertaining to the grievance of Dr.Ajay Rohtagi was invalid inasmuch as the Indian Medical Association straightway constituted the election tribunal in violation of Article 15 of the Articles of Association of Delhi Medical Association which envisages reference of an election dispute to an internal committee of the Delhi Medical Association.

18. It is thus obvious that the dispute raised by Dr.Ramesh Dutta was in relation to actions of Indian Medical Association. If that be so, the inevitable conclusion is that the dispute was raised by a member of a State branch of Indian Medical Association with the Indian Medical Association. The dispute raised was whether Indian Medical Association can constitute an election tribunal without following the procedure prescribed under Article 15 of the

Articles of Association of the Delhi Medical Association. The sequitur thereof would be that the dispute raised would squarely be covered by rule 41 of the rules framed by the Indian Medical Association.

19. May be, the dispute was between 2 members of a State branch. But what is relevant to note is that the Indian Medical Association claimed to have resolved the said dispute by medium of constitution of an election tribunal. Plaintiff, Dr.Ramesh Dutta questioned the very constitution of the election tribunal and its decision.

20. Meaningfully read, rule 40(b) and rule 41 of the rules framed by Indian Medical Association can be harmonized. Election disputes between State branches have to be resolved by constitution of election tribunals under rule 40(b). If there is a dispute pertaining to the constitution of the election tribunal, the dispute has to be resolved under rule 41 through the process of arbitration.

21. The petition accordingly stands disposed of quashing the impugned order dated 7.12.2006. Application filed by the petitioner under Section 8 of the Arbitration and Conciliation Act 1996 is allowed. Dispute raised by Dr.Ramesh Dutta is referred to the working committee of the

Indian Medical Association for adjudication as per the requirement of rule 41 of the rules framed by the Indian Medical Association.

22. No costs.

April 17, 2007 (PRADEEP NANDRAJOG)
dk JUDGE